



Federal Communications Commission
Washington, D.C. 20554

June 25, 2007

DA 07-2791

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Raymond J. Quianzon, Esq.
Fletcher, Heald & Hildreth P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

RE: WT Docket 07-80, Request for Waiver of the Analog Service Requirement

Dear Mr. Quianzon:

For the reasons stated below, we hereby grant Copper Valley Wireless, Inc. (CVW) a conditional waiver of Section 22.901(b) of the Commission's Rules,¹ which requires cellular radiotelephone service licensees to provide analog service to subscribers and roamers whose mobile equipment conforms to the Advanced Mobile Phone Service (AMPS) standard (the "analog service requirement") until February 18, 2008 (the "analog sunset date").²

Background. The Commission adopted the analog service requirement in 1981 to foster nationwide roaming and the widespread availability of affordable consumer handsets.³ In 2002, the Commission determined that it was unnecessary to continue the analog service requirement indefinitely, because it had substantially achieved the Commission's goals.⁴ The Commission also found that immediate elimination of the requirement could harm specific classes of consumers, "particularly those with hearing disabilities as well as emergency-only consumers, who currently continue to rely on the availability of analog service and lack digital alternatives."⁵ The Commission determined that the analog service requirement should be phased-out gradually over a five-year period, which commenced on the effective date of the *Analog Sunset Order*, February 18, 2003.⁶ The Commission reasoned that such a transition period was necessary because digital technologies had been shown to cause interference with hearing aids and cochlear implants, and found that a five-year period should enable the development and wide-spread distribution of hearing aid-compatible digital phones.⁷ The Commission also noted that a

¹ 47 C.F.R. § 22.901(b).

² See Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18405 ¶5 (2002) ("*Analog Sunset Order*"), *Order on Reconsideration*, 19 FCC Rcd 3239 (2004). The Commission recently denied a petition for rulemaking seeking a two-year extension of the analog sunset date. See *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters*, RM No. 11355, FCC 07-103 (rel. June 15, 2007) ("*Analog Sunset MO&O*").

³ See *Inquiry into the Use of the Bands 825-845 and 870-890 for Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469, 508 ¶93 (1981).

⁴ See *Analog Sunset Order*, 17 FCC Rcd at 18406 ¶8, and 18409-18412 ¶¶13-17.

⁵ *Id.*

⁶ *Id.* and *id.* at 18414-18419 ¶¶22-30.

⁷ *Id.* at 18418 ¶28.

transition period would “mitigate possible negative effects to emergency-only consumers that might otherwise occur with an immediate elimination of the analog requirement.”⁸

Waiver Request. CVW filed its Waiver Request on February 1, 2007, and amended it on March 28, April 18, and June 13, 2007.⁹ On April 16, 2007, the Wireless Telecommunications Bureau released a Public Notice inviting interested parties to comment on the Waiver Request.¹⁰ Comments and reply comments were due on May 7 and May 17, 2007, respectively. No party filed comments, and no party, other than CVW, filed reply comments.

CVW operates an analog cellular system in south central Alaska (CMA316-Alaska 2-Bethel), and seeks waiver of Section 22.901(b) to discontinue analog service at 12 of its system’s 13 base stations before the analog sunset date.¹¹ CVW’s Cellular Geographic Service Area covers a small portion of the Valdez-Cordova Census Area, which had a 2000 Census population of 10,915 persons.¹² CVW states that it serves 1,300 analog subscribers—including 158 households that receive fixed cellular service—and seeks to transition these subscribers to its new digital CDMA cellular system as phased construction is completed. CVW initiated commercial service at nine of its 13 base stations in spring 2007.¹³ Its four remaining sites are scheduled to be constructed by July 2007, and to be put into commercial operation in the fall of 2007.¹⁴ CVW has been marketing tri-mode handsets (analog, CDMA cellular, and CDMA Broadband PCS) since December 2005, which will be E911 compliant when activated on the CDMA network.¹⁵

CVW argues that continued application of the analog service requirement to CVW is unduly burdensome given that its first generation analog equipment has been discontinued by the manufacturer and that it no longer has a readily available source for technical support, repair services, or spare parts. CVW states that it is particularly concerned that it has no spare T1 interface circuit cards and only a limited number of spare switching and base station circuit cards on hand, and no additional cards can be obtained.¹⁶ As a result, CVW contends that there is a “very real potential that...a single point failure...will result in an unrecoverable system outage.”¹⁷ CVW further states that because some of its cell sites are located in remote areas without paved roads, it is difficult and costly to repair and maintain

⁸ *Id.* at 18415 ¶24.

⁹ Request for Limited Waiver of Section 22.901(b) of the Commission’s Rules, FCC No. 0002897896, (filed Feb. 1, 2007) (“Request”), Amendment to Request for Limited Waiver of Section 22.901(b) of the Commission’s Rules (filed Mar. 28, 2007) (“First Amendment”), Further Amendment to Request for Limited Waiver of Section 22.901(b) of the Commission’s Rules (filed Apr. 18, 2007) (“Second Amendment”), Further Amendment to Request for Limited Waiver of Section 22.901(b) of the Commission’s Rules (filed June 13, 2007) (“Third Amendment”).

¹⁰ See “Wireless Telecommunications Bureau Seeks Comment on Request of Copper Valley Wireless, Inc. for Waiver of the Analog Service Requirement,” WT Docket No. 07-80, *Public Notice*, 22 FCC Rcd 7356 (WTB 2007).

¹¹ The thirteenth base station is owned by ACS Wireless, Inc. and will remain operational in analog mode until at least February 18, 2008. Request at 1-2.

¹² *Id.* at 3.

¹³ Third Amendment at 1.

¹⁴ *Id.*; Request at 2-3.

¹⁵ Request at 4.

¹⁶ *Id.* at 1-2. CVW notes that if it permitted to phase out its analog service prior to the sunset date, it can use the parts from its decommissioned sites to repair its remaining analog sites.

¹⁷ *Id.* at 6.

them. In order to service such sites, CVW states it must charter a helicopter and that repair crews may be required to remain on site for several days, which CVW argues is “a burdensome and potentially hazardous undertaking, particularly in extremely cold weather.”¹⁸

CVW also argues that requiring it to continue to provide analog service is unnecessary to serve the underlying purpose of the analog service rule. CVW states that it offers two hearing-aid compatible digital CDMA handsets and proposes to address the needs of its subscribers with hearing disabilities by providing a free hearing aid-compatible digital phone to any existing analog subscriber with hearing disabilities until February 18, 2008.¹⁹ In addition, CVW states that it will provide eligible subscribers free emergency-only digital handsets until February 18, 2008.²⁰ CVW also states that it does not serve any alarm companies.²¹

CVW further states that it will provide free digital handsets to all existing analog-only mobile subscribers as an incentive to migrate to digital service. Subscribers may pick up a new digital phone at a CVW store or CVW will mail a tested, programmed phone to the subscriber.²² CVW states that it will provide fixed users free digital replacement equipment, which it will install (at no charge) for any user accessible by road, and will provide users inaccessible by road, a free “Phone-in-a-Box” kit for self-installation.²³ In order to ensure there is no disruption of service to any analog subscriber who receives their new handset and/or equipment by mail, CVW will contact each such subscriber by telephone before deactivating their analog unit.²⁴ CVW further states that it will use billing inserts, direct mailings, telephone calls, and newspaper advertisements to notify subscribers that analog service will be discontinued.²⁵

Discussion. A waiver of the Commission's rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or, in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.²⁶

Based upon the totality of the circumstances presented in the record before us, we find that a conditional waiver permitting CVW to phase out analog service before the analog sunset date is warranted. We agree with CVW that to require it to continue to provide analog service would be unduly

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 1, 4.

²⁰ *Id.* at 1.

²¹ Request at 4.

²² First Amendment at 1. CVW states that these digital phones will be eligible for rate plans that are more attractive than legacy analog calling plans. Currently, analog subscribers upgrading to a free digital phone are required to commit to a two-year service contract. Beginning August 1, 2007, however, no such minimum duration service contract will be required. *Id.* at 2.

²³ *Id.* at 3-4; Second Amendment at 1. None of the existing fixed users will be required to enter into a minimum service contract as a condition of receiving free digital replacement equipment. Second Amendment at 1.

²⁴ First Amendment at 3-4.

²⁵ *Id.* at 1.

²⁶ See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

burdensome, particularly in light of the unusual inaccessibility and operating conditions associated with several CVW cell sites,²⁷ and the potential for failure of CVW's analog network. Moreover, CVW's plan to provide persons with hearing disabilities and emergency-only users free digital handsets addresses the Commission's underlying rationale for adopting the analog sunset period. CVW also will minimize the impact of decommissioning analog service, by offering free digital handsets and equipment to all of its analog-only subscribers, including fixed subscribers. We also note that CVW has committed to undertake comprehensive notification procedures, including billing inserts, direct mailings, telephone calls, and newspaper advertisements, which will ensure that the public is fully apprised of CVW's phased decommissioning of analog service.

In view of the foregoing, we hereby grant CVW's Waiver Request, subject to the following conditions, which must be satisfied before CVW discontinues analog service:

- CVW must identify all analog-only subscribers, including fixed users, and offer them CDMA handsets and/or equipment, free of charge, and on service terms no less favorable than they currently receive for at least one year.
- CVW must offer a hearing aid-compatible CDMA handset, free of charge, to each analog-only subscriber with hearing disabilities,²⁸ and on service terms no less favorable than they currently receive for at least one year.
- At least 30 days before discontinuing analog service in any portion of its CGSA, CVW must advise all subscribers and the general public in that portion of its service area that analog service will be discontinued. CVW may satisfy this condition by, for example, direct mailings and telephone calls, billing inserts, and newspaper notices.
- At least 30 days before discontinuing analog service in any portion of its CGSA, CVW must either certify that the discontinuance of AMPS service will not result in any loss of wireless coverage throughout its CGSA,²⁹ or file revised CGSA information pursuant to Section 22.911.³⁰

²⁷ See, e.g., ACS Wireless, Inc. for Limited Waiver of Analog Service, *Order*, 21 FCC Rcd 14594, 14597-98 ¶¶7, 9 (WTB 2006) (limited, conditional waiver of 22.901(b) warranted where licensee faced "unusual climatic and operating conditions").

²⁸ As part of this condition, CVW must reasonably allow affected individuals to test CVW's hearing aid-compliant CDMA phones for compatibility with their hearing aids.

²⁹ See *Analog Sunset MO&O*, FCC 07-103, at ¶49. The certification must be signed by a licensee principal and sent to the Chief, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, DC 20554.

³⁰ 47 C.F.R. § 22.911.

Raymond J. Quianzon, Esq.
June 25, 2007
Page 5 of 5

Accordingly, IT IS ORDERED that, pursuant to Sections 0.131, 0.331, 1.925(b)(3) and 22.901(b) of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925(b)(3) and 22.901(b), the Request of Copper Valley Wireless, Inc. for Limited Waiver of Section 22.901(b) of the Commission's Rules, filed February 1, 2007, IS GRANTED, subject to the conditions enumerated above.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau